

Zoning Board of Appeals
Minutes
November 8, 2021

A meeting of the Zoning Board of Appeals (ZBA) was held in person and via the Zoom Web Conferencing Service on November 8, 2021 at 6:30 pm.

Present: Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore
Associate Members: Leonard Golder

Absent: Associate Member Ruth Sudduth and Michael Nail

The Meeting was called to order at 6:30 pm

206 Barton Road Deliberations – Special Permit and Variance – Volume III, Page 848 and 849

Present:
Michael and Paige Lombardi, Applicants
Tim Hess, InSitu Architects, representing the Applicants

Variance

Members discussed the request for a variance for a front yard setback to allow construction of a car port at 206 Barton Road.

Mark Jones said he is having hard time finding a hardship for the variance request. He said there are plenty of properties that don't have a garage.

Ernest Dodd said he agrees. He drove down Barton Road and noted that other than one person who has an aluminum tent- most garages are set back from the road.

Leonard Golder asked what about houses that are closer to the road. Ernest Dodd said most houses are set back.

Leonard Golder said the Board could find there is a topographical issue because the property slopes down to the lake.

Mark Jones asked where the hardship for a car port is. Leonard Golder said exposure to the elements and the need to shovel. Andrew DeMore said a car port doesn't eliminate exposure.

Andrew Demore questioned if there would be an opportunity to do half the car port. Members noted that would still require a variance. Ernest Dodd said they could make it smaller and move it closer to the house

Mark Jones said they would have to drive over the septic tank. He doesn't know the specs for the tank and if that is possible. Mark Jones said in reviewing court decisions, hardship would be when you can't build "anything" on the lot. In this case, they can build the house.

Ernest Dodd said it would be more in keeping with the neighborhood if the car port were moved up against the house with a 1-foot variance required. Mark Jones said that would require a plan change and would have to be noted in the Special Permit Decision.

David Hartnagel asked, if the request for variance is denied, is it the intent of members that the request does not satisfy the standards with regards to lot shape, soil and topography and questioned if there is hardship associated with those.

Mark Jones said he thinks of Lake Boon as a whole district with similar properties. He doesn't see this is unique to the lake area. In order to grant a variance, you need to be looking for real unique situations such as topography as compared to other properties in the area. In this instance the whole neighborhood is the same.

Andrew DeMore said what makes this property unique is the lot is smaller than the typical lot in the area. Mark Jones said that courts have called out that issue and said size doesn't matter.

Andrew DeMore said it is a matter of how it fits in the community. David Hartnagel said the lot is smaller, but not materially smaller. Andrew DeMore said the house next door is similar in size.

Mark Jones said the statute (Chapter 40A, Section 10) has some clarity and the phrasing is very clear.

Mark Jones questioned how the Board should define the district - the Town of Stow Residential District as a whole or the Lake Boon area. He feels there is a lot of similarity for a good 100+ properties in the area.

Mark Jones said the Board should decide if there is a threshold the Board should come to terms on.

Ernest Dodd said he's sure they didn't know about variances when they bought the property, but it was and is a very small lot. He doesn't believe there is a hardship. They will still have a 3-bedroom home that will look very good. They could put a car port in but must meet the front yard setback requirement.

Leonard Golder noted there is no topographical problem because they can achieve building a home. There is nothing unusual about the shape, there is no similar structures close to the road in the area and many of the lots in the area are small. David Hartnagel said if those three criteria don't fit there is no hardship. The topography slopes down but that issue doesn't apply to the car port. The statute talks about substantial hardship. He doesn't think a car port meets the level of substantial hardship.

Andrew DeMore asked, if the variance is denied, will the decision stand up to an appeal. Mark Jones said it would be a weak appeal because it is a discretionary decision.

William Byron said this application may not meet what we are looking for. Although it is a very small lot and they are not asking for two story garage, they are asking for a cover. He said if

they remove the shed and left the area next to the house for stormwater it may be a matter of a 1-foot variance rather than a 12-foot variance – but it is still a variance.

Ernest Dodd said they could construct a carport that is only 19' deep. The surface area won't change by just moving it.

William Byron said the neighbor didn't object to the proposed location. Ernest Dodd said he wouldn't object if it was his neighbor, but it doesn't meet the criteria to justify granting a variance. He said they could put up a car port that meets the front yard setback. The Board would not be denying a car port, just the location. That should be stated in both the variance and Special Permit decisions.

Members reviewed the draft Variance decision and agreed to the following findings:

- The Board does not find circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located to justify granting of a variance.
- The Board finds that lots in the general neighborhood have similar shape, topography and soil conditions.
- The Board finds that it is possible to construct a car port situated on the lot in a location in compliance with the 30-foot front yard setback requirements of the Zoning Bylaw. Therefore, the Board finds that literal enforcement of the provisions of the Zoning Bylaw would not involve substantial hardship, financial or otherwise, to the Applicant;

Tim Hess, representing the applicant noted that the lot width is extraordinary as compared to 10+ lots to the north and south. This lot and the abutting lots are the outliers.

Andrew DeMore moved to DENY the request for variance as discussed:

- ***The Board does not find circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located to justify granting of a variance.***
- ***The Board finds that lots in the general neighborhood have similar shape, topography and soil conditions.***
- ***The Board finds that it is possible to construct a car port situated on the lot in a location in compliance with the 30-foot front yard setback requirements of the Zoning Bylaw. Therefore, the Board finds that literal enforcement of the provisions of the Zoning Bylaw would not involve substantial hardship, financial or otherwise, to the Applicant.***

The motion was seconded by Ernest Dodd and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Special Permit

Members reviewed the draft Special Permit Decision and agreed to include the following finding.

1. The design and construction shall be essentially in conformance with documents and plans on file with the Board with the following exceptions:
 - The proposed car port shall be situated on the lot in a location that meets the required 30-

foot front yard setback requirements of the Zoning Bylaw.

- The proposed car port shall be located no closer than 2.1 feet from the northerly property line.
- The proposed car port shall be located no closer to the southerly property line than the setback as shown on the Plan.

Andrew DeMore moved to grant the Special Permit for 206 Barton Road as drafted and amended. The motion was seconded by Ernest Dodd and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Potential Zoning Bylaw Changes for Lake Boon area

Mark Jones suggested a joint meeting with the Planning Board on potential zoning amendments for the Lake Boon Area. Consideration of reviewing the bylaw for non-conforming lots or creating a new Residential Zone District.

Adjournment

At 7:55 pm, ***Andrew DeMore moved to adjourn the meeting. The motion was seconded by David Hartnagel and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).***

Respectfully submitted,

Karen Kelleher